

5 HOWARD A. ENGLE, M.D., et al.

Property of: Ness, Motley
Main Pl File Room
Charleston, SC

vs.

Case #94-08273CA (20)

RJ REYNOLDS TOBACCO COMPANY,
et al.

May 21, 1998

CERTIFIED COPY

Richmond, Virginia

12 The telephonic deposition of FRANK L. DAYLOR, a
13 Witness, taken at the instance of the Plaintiffs,
14 before Sherall W. Dementi, Notary Public for the State
15 of Virginia at Large, beginning at 1:30 p.m., at
16 Hunton & Williams, 951 East Byrd Street, Richmond,
17 Virginia; said deposition taken pursuant to the Rules
18 of the Supreme Court of Virginia.

COOK & WILEY, INC.
Registered Professional Reporters
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and Frank L. Daylor

0980

FORM LASER BOND 4 ② PENGAD • 1-800-611-6999

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FRANK L. DAYLOR

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BY MR. HOAG	4
BY MR. NUNLEY	70
BY MR. HOAG	81

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E X H I B I T S

NUMBER

PAGE

Plaintiff's Exhibit 1 6

Resume of Frank L. Daylor.

C E R T I F I E D Q U E S T I O N S

Q What did they tell you? (Page 23, line 15.)

Q Did you say anything to the attorney with
regard to what you would testify about?
(Page 24, line 5.)

COOK & WILEY, INC.

2062834972

1 FRANK L. DAYLOR, a Witness, called by the
2 Plaintiffs, first being duly sworn, testified as
3 follows:

4

5 EXAMINATION BY MR. HOAG:

6

7 Q Could you state your name for the record,
8 please.

9 A Yes, my name is Francis L, for Lawrence,
10 Daylor. That's D-A-Y-L-O-R.

11 Q Mr. Daylor, have you ever been deposed
12 before?

13 A Been what?

14 Q Deposed.

15 A Yes.

16 Q How many times?

17 A Once.

18 Q And what were the circumstances when you
19 were deposed before?

20 A A fellow who was in my division at Philip
21 Morris wanted to leave and go to a competitor, and his
22 employment agreement prevented that, and there was
23 some matter that resulted in deposition. This was
24 really quite a while ago now, but it was those sort of
25 circumstances.

2062834973

COOK & WILEY, INC.

3980

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FORM LASER BONDA

1 Q Was it over 20 years ago or something or
2 what?

3 A No, it's not over 20, but probably 1980 or
4 so.

5 Q And it didn't have anything to do with
6 tobacco and this litigation, right?

7 A From my perspective it was just a labor kind
8 of matter.

9 Q So okay. You were deposed one time and it
10 was about 18 years ago. You know that there's a court
11 reporter there and she is taking down everything you
12 say and I say, right?

13 A Yes, sir.

14 Q And you understand that you need to give me
15 oral, verbal responses otherwise the court reporter
16 can't get it down, and of course since I'm over the
17 phone, I can't even see you. So I will need you to
18 give me verbal responses. Okay.

19 A Okay.

20 Q If there's any question that I ask that you
21 don't understand or you need me to repeat, please let
22 me know and I'll be glad to repeat it or rephrase it.
23 Okay.

24 A Will you bear with me. My hearing is less
25 than good.

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1 Q Okay. I'm sure that every once in a while
2 you are going to tell me you don't hear me, and we
3 will go over it again.

4 A Thank you.

5 (Off the record.)

6 Q Do you wear a hearing aid, sir?

7 A No, I don't, but that is a much better
8 presentation from the speaker now.

9 Q Okay. So you just moved around a little bit
10 so that you could hear it better?

11 A No. Somebody tuned up the volume I guess.

12 Q That's good. So are we all kind of ready do
13 go now?

14 A Yes.

15 Q I have a copy of a three-page resume. I
16 would like to get that marked as Plaintiff's Exhibit
17 1.

18

19 (Plaintiff's Deposition Exhibit 1 is
20 marked.)

21

22 Q Is that your resume, sir, Plaintiff's
23 Exhibit 1?

24 A Yes. I must tell you I don't know when this
25 was put together, and it was some time before I

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1 retired. And what the purpose of it was rather than
2 just get it down on paper, I really don't know from
3 memory.

4 Q Okay. So where it says on the top 1985 to
5 present, *Principal Scientist* --

6 A Yes.

7 Q -- you were actually retired in 1993; is
8 that correct?

9 A January 1, 1994.

10 Q Have you done any work at all for Philip
11 Morris or any other Tobacco Company since then?

12 A Yeah, for Philip Morris through Hunton &
13 Williams here. And I also did some things for Shook,
14 Hardy & Bacon. I also did some things for Philip
15 Morris Limited, the company in Australia, and that was
16 through Coopers Lybrand and their counsel in
17 Melbourne, Arthur Robinson.

18 Q Now of the things that you have done since
19 January 1, 1994 that are for Philip Morris, do those
20 all involve working with or through attorneys?

21 A Yes.

22 Q And what particular work have you done since
23 January 1, 1994 for Philip Morris?

24 MR. NUNLEY: Well John, I instruct the
25 witness to answer in general terms. I think that

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1 those are areas that involve work product
2 projects. I don't mind him giving you some
3 general idea what he has done, but I ask him to
4 do that in a general way with the understanding
5 that his doing that doesn't waive any work
6 product claims we have to that project.

7 MR. HOAG: It's agreeable to me to get some
8 response from him. I'm not agreeing that the
9 stuff is privileged to begin with.

10 MR. NUNLEY: I understand that, but I'm just
11 saying that by allowing him to answer the
12 question, I just don't want it to be argued that
13 it's a waiver of whatever privileges attaches, if
14 any; is that agreeable?

15 MR. HOAG: Here's what I'll say on the
16 record. We don't agree that the information that
17 I'm asking for, any of it, is privileged. We
18 don't agree that it's appropriate for him to only
19 answer the questions in general terms. To the
20 extent you want to be able to make an argument in
21 front of the Judge that it's privileged, you can
22 make that argument; and you are not going to lose
23 the right to make the argument by the fact that
24 he is answering what you -- the term you describe
25 in general terms.

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1 MR. NUNLEY: And you will not argue that
2 we've waived -- if there's any privilege that
3 attaches -- that we have waived that by allowing
4 him to answer? If we have that understanding, I
5 think we can go forward.

6 MR. HOAG: I think that's pretty much what I
7 already said.

8 MR. NUNLEY: Good. Then we are in
9 agreement.

10 A Now, would you go back to the question
11 that's not in the conversation between you and
12 Mr. Nunley.

13 Q Yes.

14 (Court reporter reads pending question.)

15 A Okay. Probably early did some things with
16 the people who were picking up the work that I was
17 leaving, sort of in the line of training, acquainting
18 them with the things that I did. Then advised Hunton
19 & Williams on some matters in the suit against ABC,
20 and then continuing advised Hunton & Williams and
21 Philip Morris people or assisted Hunton & Williams and
22 Philip Morris people in putting together what we call
23 brands history, which simply means the tobacco
24 materials, the ingredients, and the cigarette
25 construction materials that were in brands at a

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1 particular time.

2 With Shook Hardy -- that's Shook, Hardy,
3 Bacon, I assisted in doing regulatory work, compliance
4 work in Thailand, Australia, and New Zealand. I
5 probably also assisted to some degree with some
6 regulatory matters in some of those hard-to-name
7 places in Eastern Europe. The names don't come to my
8 mind right now.

9 And then through the Coopers Lybrand and
10 Arthur Robinson people, Philip Morris Limited, the
11 Australia company, had been denied some tax
12 concessions for research and development work -- I
13 don't remember the time that they were denied the tax
14 concessions, but in the nineties sometimes -- I had
15 advised them on the product development matters that
16 were under discussion between Philip Morris Limited
17 and the Australian government.

18 Q Does that pretty much generally summarize
19 what you have done with Philip Morris since January of
20 1994?

21 A Yes, I'm pretty sure that's the outline of
22 it.

23 Q You said you did some things to wrap up your
24 employment, some training type stuff?

25 A Yes.

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1 Q That stuff didn't involve attorneys, right?

2 A No. It involved the people in the Research
3 and Development Department at Philip Morris.

4 Q What was the training that you were doing?

5 A I had been involved in ingredient matters
6 and regulatory compliance matters with the United
7 States and in New Zealand, and just bringing them
8 up-to-date as to where I thought I was on those
9 matters.

10 Q Did you put that in writing or was it all
11 oral training?

12 A If there were any writing, it was very
13 limited. It was almost all conversational.

14 Q What were the ingredient matters that you
15 were referring to?

16 A In the United States, people who
17 manufacture, sell, whatever, distribute cigarettes
18 have an obligation to reveal to the government of the
19 United States the ingredients added to tobacco during
20 the manufacture of cigarettes. Okay.

21 Q Uh-huh.

22 A I'm just trying to think what the
23 requirement was in New Zealand.

24 Q Without getting into New Zealand, stay with
25 the United States, at least for now.

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1 A Okay.

2 Q This obligation to reveal the ingredients
3 added to tobacco, how long has that obligation been in
4 existence to your knowledge?

5 A Something that sounds like the Cigarette
6 Labeling Act or some phrase like that was probably
7 passed in 1984 to go into effect in 1985, and the
8 first industry list went to the government in April,
9 early in April of -- first several days of April 1986,
10 and then again at the end of -- in December '86, and
11 then December each year following.

12 Q When you said industry list, what do you
13 mean?

14 A The act makes provision for a group, in this
15 case the major cigarette companies, to make a
16 composite list of the ingredients that are used by
17 each of the companies. And of course all of this is
18 done through attorneys so that one company doesn't see
19 the other company's ingredients, and the attorneys
20 compile what would be a composite industry list
21 representing all of the ingredients used by those
22 manufacturers.

23 Q So the government gets a list, of cumulative
24 list of all of the ingredients that are contained in
25 cigarettes. It doesn't get -- and by that I mean it

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1 does not get a list of the specific additives or
2 ingredients in each individual brands. Instead it
3 gets a cumulative total list of all the additives when
4 you put them all together; is that correct?

5 A Cumulative, I'm not sure exactly how that
6 fits in. What I want to say -- and maybe we are
7 saying really the same thing. I'm not sure -- that
8 it's a composite list of all the ingredients in the
9 brands manufactured by these companies.

10 Q Just so we understanding each other. For
11 example, if -- and I'm just making up numbers now.
12 This is a hypothetical -- for example, if Marlboro has
13 20 of these ingredients and Winston has 15 of these
14 ingredients, and the 15 that Winston has are totally
15 separate from the 20 that Marlboro has, and Camel over
16 at RJR has another 20 ingredients that are different
17 from the others that Winston or Marlboro has, then
18 what the federal government is going to be given or
19 what any government entity that is entitled to this
20 information is going to be given is a list of 55
21 ingredients, but they will not be told which ones
22 match with which brand; is that correct?

23 A Yes, sir.

24 Q Is that a yes?

25 A Yes, sir.

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1 Q And why is the government not told which
2 ones match with which brands?

3 MR. NUNLEY: Objection. I think it calls
4 for the witness to speculate as to why the
5 statute is written as it is. Calls for a legal
6 conclusion. Objection.

7 Q Do you know why?

8 A Other than simply the fact that the law
9 makes provision for that. I don't know the thought
10 process that went into it.

11 Q So does anyone other than certain
12 individuals working for each tobacco company know
13 which specific additives are in each brand of
14 cigarettes?

15 A Please repeat that.

16 Q Okay. Does anyone other than specific
17 individuals in each tobacco company, for example,
18 Philip Morris, know the specific ingredients or
19 additives that are in Marlboro Lites for example?

20 A Verbatim, nobody would really know. A
21 select few individuals could have that information in
22 front of them.

23 Q And what select few individuals would have
24 access to the information concerning the specific
25 additives of ingredients that are in Marlboro Lite?

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1 A Well, this is not to be flip, but those who
2 have or need to know which would be those who are
3 compiling the list of ingredients for federal
4 compliance and the like.

5 Q Would that be fewer than ten people?

6 MR. NUNLEY: Mr. Hoag, do you mean at any
7 given time or over time?

8 Q Well, let's start at any given time, would
9 fewer than ten people know the ingredients, including
10 all the additives that are in a Marlboro Lite?

11 MR. NUNLEY: Objection, speculation and
12 foundation as to asking him about that for the
13 present. I think you need to constrain the
14 question to the period of time he was at the
15 company.

16 MR. HOAG: Whatever he knows, because he is
17 still doing work for the company. He knows what
18 he knows and what time, I don't.

19 A Up until retiring from Philip Morris, I
20 think it is correct that there would be less than ten
21 people who would have that access.

22 Q And after the time you retired, you just
23 don't know; is that right?

24 A I really don't know. Right now I would not
25 have that access.

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1 Q Do you know whether the -- let me back up.
2 Have you ever heard of the term "synergy"?

3 A Yes.

4 Q What does that term mean to you?

5 A By example, put one and one together, and
6 you might get a little bit more than two.

7 Q So if two chemicals, for example, have a
8 synergistic effect on each other, the two put together
9 might have some greater impact than each of them
10 separately would have, correct, they have a
11 synergistic effect?

12 A If there is synergy, yes, it would be
13 greater than just a simple sum.

14 Q Do you know whether or not Philip Morris has
15 tested, for example, Marlboro Lite ingredients for
16 synergistic effects to find out if there is any
17 synergistic effect between the various ingredients in
18 the Marlboro Lites?

19 MR. NUNLEY: Objection, foundation.

20 Q Did you answer or are you thinking?

21 A I didn't answer.

22 MR. NUNLEY: Mr. Daylor, from time to time I
23 will object for purposes of the record. And if
24 for some reason I think it's improper for you to
25 answer, I will tell you that at the time I make

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1 the objection. Otherwise when I object, that's
2 just to preserve the record, and you can continue
3 to answer the question.

4 A I misunderstand the circumstances. I hate
5 to do this to you, but I don't have the question in
6 mind now.

7 Q I'm going to ask the court reporter to read
8 it back please.

10 (Court reporter reads pending question.)

12 A No, I really don't know that and it would be
13 hard to visualize how one would do it.

14 Q So you don't know whether Philip Morris,
15 anyone at Philip Morris has ever done that on any
16 brand of cigarettes, correct?

17 MR. HOAG: Objection founded.

18 A No, I don't know that.

19 Q That is something that you would most likely
20 know about if it had occurred during the time that you
21 worked for Philip Morris?

22 A I might know about it. I don't think I can
23 say most likely know about it.

24 Q Well, would you be more likely than not to
25 have known whether or not that was happening during

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1 the time that you worked for Philip Morris?

2 MR. NUNLEY: Objection as to form. Calls
3 for speculation.

4 A I think there would be a good chance that I
5 would have at least heard of it.

6 Q And as we sit here today, you never have
7 heard of that having occurred, correct?

8 MR. NUNLEY: Objection as to form.

9 A Is the question -- would you repeat it,
10 please.

11 Q As we sit here today, you have never heard
12 of that having occurred? And by that having occurred,
13 I mean any brand of cigarettes being tested for the
14 interactions or synergistic effect of the ingredients
15 in a particular brand of cigarettes?

16 A I have not heard of that.

17 Q Now, what you just described about
18 ingredient matters -- I asked you about ingredient
19 matters, because you used that term when you were
20 doing training when you were retiring -- other than
21 ingredient matters pertaining to identifying the
22 additives or the additive list in composite form that
23 would be provided to the government, is there anything
24 else involved with the term ingredient matters that
25 you dealt with?

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1 MR. NUNLEY: You mean as part of this
2 pre-retirement training he's described?

3 MR. HOAG: Yes, as part of this
4 pre-retirement training.

5 A Those ingredient matters would be just
6 making my files available to them, a few points of
7 interpretation, a few points of processing, and
8 putting -- making the composite Philip Morris list to
9 go together with the other company's composite list.

10 Q You also mentioned among the activities you
11 did to train people immediately prior to your
12 retirement was regulatory compliance matters. What
13 regulatory compliance matters were you referring to?

14 MR. NUNLEY: I object. I think that
15 mischaracterizes his prior testimony, but you can
16 answer the question.

17 A The compliance -- the requirement to
18 disclose ingredients in the United States as we have
19 just been discussing, the requirement in New Zealand
20 may be a little vague in my mind now, but it was a
21 requirement to disclose the number of cigarettes sold,
22 according to my recollection, the number of cigarettes
23 sold, the weight of the tobacco, and the weight of
24 ingredients. That's what I recall of what the New
25 Zealand requirement was.

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1 Q The work you have done since you've been
2 retired, the work that you have done for Philip
3 Morris, are you being paid and have you been paid for
4 that?

5 A Yes.

6 Q How are you compensated? Is it by the hour?
7 Is it a contractual relationship by the month or what
8 is it?

9 A By the hour.

10 Q And how much do you receive per hour?

11 A From Hunton & Williams, \$100; from Shook
12 Hardy -- I haven't billed Shook Hardy in a long time
13 -- probably \$85. The Australia thing we talked about
14 was also at 100 US dollars per hour.

15 Q Your testimony today, where does that fall
16 in?

17 A Where does it what?

18 Q Where does it fall in as far as your fees
19 are concerned?

20 A It doesn't.

21 Q You are not charging any hourly fee for your
22 testimony?

23 A That's correct.

24 Q Pardon me?

25 A I am not charging any fees for the testimony

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1 or the preparation.

2 Q And you understand you have been listed as a
3 fact witness in the Engle case? Do you understand
4 that?

5 A I understood that I had been listed. I'm
6 not sure I understand the specifics of fact witness.

7 Q Did anyone explain to you that you were a
8 fact witness in the Engle case?

9 MR. NUNLEY: Objection. I think to the
10 extent that calls for attorney-client
11 communication, it's privileged.

12 If you can answer that outside of any
13 communications you have had with your lawyers,
14 Mr. Daylor, that's fine, but otherwise I think
15 it's privileged.

16 A If I had been told as a fact witness, I have
17 forgotten it.

18 Q Did you hire any of the lawyers that are
19 present in the room today?

20 A Was the question did I hire any of them?

21 Q Yes.

22 A The answer is no.

23 Q Did you select any of them to be your
24 attorney?

25 A No.

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1 Q When did you first find out they would be
2 representing you?

3 A When I found out that there was a deposition
4 scheduled.

5 Q Who told you that they were your attorneys?

6 A Mr. Nunley.

7 Q So the attorney told you he was your
8 attorney?

9 A Yes.

10 Q You are not currently an employee of Philip
11 Morris, are you?

12 A No.

13 MR. HOAG: So I don't believe that you can
14 instruct this witness not to answer these
15 questions I'm asking about what he told you.

16 MR. NUNLEY: Well, you are certainly
17 entitled to your belief, Mr. Hoag, but I'm here
18 telling you I'm representing both Philip Morris
19 and Mr. Daylor.

20 MR. HOAG: It doesn't really sound like this
21 is your normal attorney-client representation.
22 It doesn't sound like there really is a privilege
23 that holds here. But we can argue that in front
24 of Judge, but I want to preserve the question.

25 MR. NUNLEY: You more than welcome to

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1 preserve the question if you would like.

2 MR. HOAG: Well, all of them. I want to
3 preserve every question that I would ask about
4 communication with you or any other attorney
5 regarding what he is going to testify to in this
6 case. Do we agree on that, that those questions
7 are preserved?

8 MR. NUNLEY: No, I don't think we do. I
9 think you need to ask them, and if I have an
10 objection, I'll make it.

11 Q When were you first contacted by attorneys
12 to be a witness in the Engle case?

13 A Exactly, not sure. About three weeks ago I
14 would think.

15 Q What did they tell you?

16 MR. NUNLEY: Objection, attorney-client
17 privilege.

18 MR. HOAG: You are instructing him not to
19 answer?

20 MR. NUNLEY: That's correct.

21 MR. HOAG: Then we'll certify the question.

22 MR. NUNLEY: All right.

23 MR. HOAG: And you are going to object any
24 question about anything that the attorney told
25 him, right?

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1 MR. NUNLEY: Mr. Hoag, I don't know what
2 questions you are going to ask. I'll have to
3 consider the question when it's asked and decide
4 whether or not to object.

5 Q Did you say anything to the attorney with
6 regard to what you would testify about?

7 MR. NUNLEY: Objection, calls for privileged
8 information on a work product and attorney-client
9 basis, and instruct the witness not to answer.

10 MR. HOAG: And I'll certify the question and
11 let the Judge decide whether I can ask what he
12 asked you and what you told him. You are
13 objecting to the question where I just asked what
14 was said?

15 MR. NUNLEY: Well, Mr. Hoag, you don't think
16 that's privileged, what was said between --

17 MR. HOAG: I don't think you have a
18 privilege with this person. I don't think he is
19 really your client. I think Philip Morris is
20 your client and he is not. That's what I think.

21 MR. NUNLEY: And as I said, you are entitled
22 to your opinion.

23 MR. HOAG: That's what we will argue to the
24 Judge.

25 MR. NUNLEY: Fine.

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1 MR. HOAG: It's just like if we had a fact
2 witness, we wouldn't be able to claim a privilege
3 either, just like you can't, but you are going to
4 do it anyway.

5 Q Do you know why you were listed as a fact
6 witness in the Engle case?

7 A Are you back to me?

8 Q Yes.

9 A No.

10 Q Do you know anything at all about the Engle
11 case?

12 A It's in Florida, and that's about the
13 substance of it.

14 Q Have you been shown or reviewed any
15 documents from the Engle case?

16 A No.

17 Q Have you seen any depositions or reviewed
18 any depositions from the Engle case?

19 A No.

20 Q Have you reviewed any exhibits from the
21 Engle case?

22 A Just the resume that Mr. Nunley faxed to you
23 a little while ago.

24 Q There's one sentence describing what you
25 will testify about that's been provided to us, and

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1 that sentence says right under your name "This witness
2 may testify concerning various aspects of
3 manufacturing and production." What aspects of
4 manufacturing and production are you going to testify
5 about, sir?

6 A Only what you might ask about that I can
7 respond to.

8 Q Are there any aspects of manufacturing and
9 production of cigarettes that you cannot respond to?

10 MR. NUNLEY: Objection to the form of the
11 question, vague and ambiguous.

12 MR. HOAG: He can answer.

13 A Yes, there are some aspects that I really am
14 not -- would not have been really familiar with when I
15 was active, and far less familiar now having been a
16 part of it.

17 Q What are those aspects?

18 A Probably cigarette paper, the specifics of
19 cigarette paper, including porosity, additives, and so
20 on.

21 Q Anything else?

22 A I might be a little vague on filtration and
23 dilution also.

24 Q Anything else?

25 A Probably not.

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1 Q So what are the remaining aspects of
2 manufacturing and production that you can testify to?

3 MR. NUNLEY: Objection as to the form.

4 MR. HOAG: You can answer.

5 A Tobacco processing, flavor and casing
6 additions, storage, shelf life matters.

7 Q Anything else?

8 A Probably not, nothing comes to mind.

9 Q As to tobacco processing, what is the
10 process involved in tobacco processing?

11 MR. NUNLEY: Objection to the form. It's
12 vague, hopelessly overbroad.

13 MR. HOAG: Your one sentence here which says
14 "The witness may testify concerning various
15 aspects of manufacturing and production," that is
16 truly hopelessly overbroad, and it doesn't give
17 us any clue to his testimony, and to that extent
18 I object and will move to strike any part of his
19 testimony that you try to introduce at trial that
20 is not answered by the witness to the questioning
21 that I'm providing.

22 MR. NUNLEY: Mr. Hoag, can you direct -- I
23 have been involved in litigation for some time,
24 and I'm familiar with obligations to disclose
25 with respect to expert witnesses. What is the

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1 obligation, is there a different obligation in
2 this case with respect to fact witnesses?

3 MR. HOAG: I would like to have the witness
4 answer my question.

5 MR. NUNLEY: No, no, no, sir.

6 MR. HOAG: Now wait. Let me ask you this.

7 MR. NUNLEY: Yes.

8 MR. HOAG: You characterized my question as
9 hopelessly overbroad. My question is based
10 exactly on what you said he was going to testify
11 about.

12 MR. NUNLEY: Well, I understand your
13 position.

14 MR. HOAG: Your objection is totally
15 inconsistent with the statement you are making
16 right now. And this is pointless for us to
17 get --

18 MR. NUNLEY: No, no, it's not pointless.
19 You've said that we filed something that's
20 inappropriate, and I'm asking you if in this case
21 there is an obligation that is different than
22 there is in every other case I have been in. I'm
23 not familiar with any obligation that requires
24 you to provide some type of a disclosure for a
25 fact witness.

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1 MR. HOAG: My statement on the record is my
2 statement. What you provided us is hopelessly
3 overbroad, to use your expression, and my
4 questions aren't nearly as broad or, quote,
5 hopelessly overbroad as your statement about what
6 he is expected to testify about.

7 Now, we can waste a lot of time talking
8 about this some more, but this is on the record,
9 and the Judge can decide whether I'm right or
10 you're right.

11 MR. NUNLEY: Well, I think what's clear is
12 you don't know anything about your case.

13 MR. HOAG: Thank you. That was a really
14 useful comment. That really moves things along.

15 Now, if we can go back to my last question
16 before we got into this useless bunch of
17 comments, including the objection that my
18 question was hopelessly overbroad. What is the
19 question I asked just before he said my question
20 is hopelessly overbroad. If you could read that
21 one.

22

23 (Court reporter reads question.)

24 (Off the record.)

25 Q Does that assist you in answering the

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1 question about tobacco processing that you can testify
2 about?

3 A Tobacco processing, I think we mentioned
4 flavoring casing application, shelf life. I think
5 those were among the things I probably said.

6 Q Is flavoring casing application part of
7 tobacco processing?

8 A It's happens during the manufacturing, yes,
9 the manufacturing process.

10 Q And what does flavoring casing application
11 entail?

12 A Flavoring casing application involves
13 applying the flavors and the casings to the tobacco
14 materials before they are made into cigarettes.

15 Q What flavors are applied to the tobacco
16 materials before they are made into cigarettes?

17 A What flavors and casings?

18 Q What flavors are added to tobacco matter
19 before they are made into cigarettes?

20 MR. NUNLEY: Mr. Hoag, let me ask you, I
21 understand there's not a protective order in this
22 case, and I further understand when the issue of
23 protective order came up, that counsel for the
24 plaintiff indicated that they weren't interested
25 in entering into a protective order, and they

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1 just wouldn't inquire about issues or about facts
2 that's were considered proprietary to the
3 companies or to Philip Morris.

4 Issues that go to what flavors are added to
5 Philip Morris products are, indeed, proprietary,
6 and I think having refused to enter into a
7 order, and said that you are not going to go into
8 these areas, I would ask you now to honor that
9 commitment.

10 MR. HOAG: In order for me to find out what
11 this witness has to say about manufacturing and
12 production, I have to understand what happens in
13 the manufacturing and production process.

14 MR. NUNLEY: Well, I don't disagree with
15 that. I'm just telling you --

16 MR. HOAG: Well, to the extent I'm being
17 denied information that is relevant, then I'm
18 going to move to strike all of this witness'
19 testimony.

20 MR. NUNLEY: You are not responding to what
21 I said. My understanding is that counsel for the
22 plaintiff refused to enter into a protective
23 order and said that they would not go into areas
24 related to proprietary information. If that's
25 the case, if you are telling me now you'd

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1 consider entering into a productive order
2 governing issues such as what flavors are used
3 on product, then I think we can go into this
4 area.

5 MR. HOAG: If you are instructing him not to
6 answer, you instruct him not to answer. I'm
7 going to ask my questions, and you make your
8 record.

9 MR. NUNLEY: Do you know whether there was a
10 conversation about a protective order and whether
11 your firm made the commitment not to go into this
12 area?

13 MR. HOAG: I'm not personally familiar with
14 a protective order related to asking questions
15 about casings and manufacturing and production to
16 a fact witness --

17 MR. NUNLEY: Why don't we take a break and
18 why don't you call Mr. Rosenblatt and inquire of
19 him.

20 MR. HOAG: Why don't you just make your
21 record and say he is not going to answer it.

22 MR. NUNLEY: No, I'm trying to work through
23 this with you.

24 MR. HOAG: If you are instructing him not to
25 answer it, why don't you just do that?

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13

14

(Brief recess.)

15

16

16 MR. HOAG: I talked to Stanley Rosenblatt
17 and I'm told there is no such agreement not to
18 ask questions, and if you are not going to allow
19 him to answer, then we will meet another time to
20 continue the deposition and have the Judge rule
21 on answering the questions.

22

23

24

25

MR. ARCHIE: Well John, it's Joseph Archie,
and we are going to have to object to any
question to the extent it calls for the
disclosure of trade secrets or otherwise

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1 confidential information. If you want to
2 pursue them -- first of all, we think that the
3 witness may be able to answer questions without
4 disclosing that information, but if you want to
5 pursue it, then we are going to have to get a
6 protective order. And if and when we have an
7 appropriate protective order, then we will make
8 Mr. Daylor available.

9 MR. HOAG: I can't hear you. You cut out.

10 MR. ARCHIE: Sorry. If and when we get an
11 appropriate order, we may make Mr. Daylor
12 available to you to ask those questions.

13 MR. HOAG: Okay. So can I assume all
14 questions regarding what the specific ingredients
15 are are preserved so I don't have to ask more
16 questions about it, because you are just going
17 say he can't answer them anyway?

18 MR. ARCHIE: Well, I think, John, that he
19 may be able to give you -- John?

20 MR. HOAG: You guys are fading in and out
21 now.

22 MR. ARCHIE: Sorry. I think he may be able
23 to give you plenty of information, and maybe all
24 that you really are looking for, without getting
25 into the area of trade secrets. I think we have

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1 got to hear the specific questions you are
2 interested in asking, and we will object to them
3 as they come up.

4 MR. HOAG: You already objected.

5 MR. ARCHIE: You're are right. In general
6 we have instructed Mr. Daylor not to disclose
7 trade secrets or otherwise confidential
8 information to you.

9 MR. HOAG: Okay. So the last question I
10 asked, you told him not to answer, right?

11 MR. NUNLEY: Well, let's have it back.

12

13 (Reporter reads question.)

14

15 MR. NUNLEY: Mr. Hoag, if you are asking the
16 witness for specific ingredients to go into
17 Philip Morris product, that really is -- cuts
18 right to the heart of trade secrets. I think you
19 are more than welcome to ask them how they're
20 applied, where they're applied, the type of
21 tobacco they go on, but I think to ask what
22 ingredients are used specifically in that manner
23 seeks trade secret information, and I'm not going
24 to instruct him not to answer, but if you press
25 that question, I would have to adjourn the

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1 deposition and seek a protective order. But I
2 would like the work around it with you to try to
3 preserve those. So you can get as much of the
4 deposition as you can take --

5 MR. HOAG: Now you're instructing him not to
6 answer that?

7 MR. NUNLEY: No. That's not what I said.
8 I'm not going to instruct him not to answer it.

9 MR. HOAG: Then he needs to answer it.

10 MR. NUNLEY: Well then, if that's what
11 you're doing, then I'll have to adjourn the
12 deposition and seek a protective order.

13 MR. HOAG: So instead of instructing him not
14 to answer it, you're going to adjourn the entire
15 deposition?

16 MR. NUNLEY: Well, that's not what I want to
17 do, but if that's the box you're going to put me
18 in.

19 MR. HOAG: Well, what I'm saying to you is
20 if you want to preserve -- if you want to tell
21 him not to answer it, then we will just preserve
22 that, and the Judge can decide it later, but I
23 can ask a lot of other questions too rather than
24 adjourn this deposition and waste that additional
25 time.

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1 MR. NUNLEY: Why don't we have an
2 understanding that specific questions that go to
3 the ingredients used in product, that you are not
4 going to go into those without a waiver of your
5 right to do it. That's preserved for the Court.
6 We going to have to have a hearing as to whether
7 we are entitled to a protective order, and your
8 questions in those areas will be preserved until
9 that matter is decided by the Court.

10 MR. HOAG: Okay, that's fine, but this is
11 assuming -- I'm not going to ask more questions
12 about what flavors are in there, because you just
13 said you are going to instruct him not to answer.

14 MR. NUNLEY: All right.

15 MR. HOAG: Those are all --

16 MR. NUNLEY: No.

17 MR. HOAG: Pardon?

18 MR. NUNLEY: I'm not going to instruct him
19 not to answer. I've told you I don't want to get
20 into a box of having to adjourn and seek a
21 protective order, and I'm prepared to give you an
22 agreed to understanding that you are going to
23 seek the right to do so, and we will seek the
24 right to have a protective order entered. It
25 seems to me that covers the issue.

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1 MR. HOAG: It does to me, but I don't think
2 you're responding to what I'm saying. What I'm
3 saying is --

4 MR. NUNLEY: What you're saying is you are
5 not going to ask him any more questions because
6 that would put me in the position of having to
7 adjourn, and I understand that, so you're going
8 to continue with the deposition as best you can
9 without trying to touch on those areas with the
10 understanding that but for this issue of the
11 protective order, you would touch on them. And
12 those questions are preserved until there's a
13 resolution of the protective order issue. I
14 think we understand each other perfectly.

15 MR. HOAG: Okay. I think now we do.

16 Q Do you know anything about ammonia?

17 A Yes.

18 Q What do you know about ammonia?

19 A It's NH3.

20 Q Is that pretty much all you know about
21 ammonia, it's NH3?

22 MR. NUNLEY: Objection as to form.

23 A What else? It's a base.

24 Q Does ammonia have anything to do with the
25 manufacture and/or production of cigarettes?

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1 A Ammonium hydroxide, which is basically
2 ammonia gas and water, the answer is yes.

3 Q What does it have to do with the manufacture
4 and/or production of cigarettes?

5 A In reconstituted tobacco it can be -- it is
6 used to free the pectin of the tobacco material so
7 that it can hold the reconstituted tobacco together.

8 Q And can the reconstituted tobacco be held
9 together in any other way?

10 A Yes.

11 Q What are the other ways or way that the
12 reconstituted tobacco can be held together absent the
13 ammonia hydroxide?

14 A The tobacco materials can be held together
15 by gum binders. The tobacco materials can be
16 processed as paper, at least those.

17 Q Now, is ammonium hydroxide added to all of
18 the tobacco products for reconstituted tobacco or just
19 some of them that Philip Morris produces?

20 MR. NUNLEY: Objection as to form.

21 A It's only added to the reconstituted tobacco
22 that is known as RCB.

23 Q RCV?

24 MR. NUNLEY: John it's B as in boy.

25 A I'm sorry. Meaning reconstituted cigar

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1 binder.

2 Q What is that?

3 MR. NUNLEY: Objection as to form.

4 A The RCB, if we can use that phrase, is the
5 reconstituted tobacco that involves the release -- the
6 use of the tobacco pectin as the binder, and that's
7 facilitated by the ammonium hydroxide.

8 Q You said -- did you say reconstituted cigar
9 binder?

10 A That's just the term that's used, sir. The
11 exact significance of the cigar term, I really don't
12 know that.

13 Q To your knowledge is that the only -- is RCB
14 the only reconstituted tobacco or the only tobacco
15 that ammonium hydroxide is added to?

16 A To the best of my knowledge, yes.

17 Q Now, does RCB, reconstituted tobacco, have
18 some special quality that means it won't hold together
19 unless you use the ammonium hydroxide, or can you use
20 those other methods of binding it together if you want
21 to?

22 MR. NUNLEY: Objection as to form.

23 A The answer to the question is yes, the
24 other -- one other form had been used, and the paper
25 making process is used.

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1 Q So why have the ammonium hydroxide? Why not
2 just use the other forms to bind reconstituted
3 tobacco?

4 A The original reconstituted tobacco was made
5 with the gum binder. The process is slow. The
6 reconstituted tobacco with the gum binder has
7 undesirable flavor contributions to the cigarette
8 smoke flavor, and those were the reasons that they
9 historically got away from the gum binder.

10 Q What are the flavor contributions of the
11 ammonium hydroxide if you know?

12 A It's my opinion that because of its
13 volatility, the ammonium hydroxide probably is not
14 there to make a real contribution.

15 Q Do you know whether or not the ammonium
16 hydroxide has anything to do with the level of
17 nicotine in cigarettes?

18 A No, the nicotine -- no. The answer is no.

19 Q You don't know whether it does or not?

20 A Rephrase your question. Repeat your
21 question, please, sir.

22 Q Do you know whether or not adding the
23 ammonium hydroxide has anything to do with the
24 nicotine level in cigarettes?

25 A Nicotine level in cigarettes comes from the

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1 tobacco material.

2 Q And you don't define the ammonium hydroxide
3 as being the tobacco material; is that correct?

4 A Ammonia exists in tobacco, but the added
5 ammonia is not a tobacco material.

6 Q Are you saying you do know whether or not
7 ammonium hydroxide has any effect on the nicotine?

8 MR. NUNLEY: Objection as to form.

9 A I think the ammonium hydroxide as it's used
10 and as it dissipates itself does not have an effect on
11 the nicotine.

12 Q Does it have any effect on the flavor and/or
13 the impact of the cigarette on the consumer?

14 A The ammonia in the tobacco material I think
15 does.

16 Q And the ammonia in the tobacco material,
17 what impact or what effect do you think it has on the
18 smoker?

19 A It has the flavor effect.

20 Q And by flavor effect what do you mean?

21 A The flavor effect being the taste, the basic
22 taste and the aroma properties that come with the
23 substance in the mouth.

24 Q What's the difference between the ammonia
25 that's in the tobacco material and the ammonium

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1 hydroxide that's added to the tobacco during the
2 manufacturing process?

3 MR. NUNLEY: Objection as to form. What do
4 you mean what's the difference?

5 Q Can you answer the question?

6 A Sir, this is not to be flip, but ammonia is
7 ammonia.

8 Q In other words there is no difference?

9 A That's it. Chemically, ammonia is ammonia.

10 Q If the ammonia in the tobacco material has
11 this impact you described, why do you believe the
12 ammonia that's added does not?

13 MR. NUNLEY: Objection. I think you
14 mischaracterize his testimony, Mr. Hoag, I don't
15 believe he used the term impact. I think that
16 was your term.

17 Q You can answer.

18 A Repeat please.

19

20 (Court reporter reads question.)

21

22 A I don't believe I said the impact from
23 ammonia.

24 Q Did you say that it has some effect on the
25 mouth and the flavor that the consumer receives?

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1 A Yes.

2 Q Whatever that effect is that you believe it
3 has, the natural occurring ammonia in the tobacco
4 material, does that same effect occur from the ammonia
5 that's added to the tobacco?

6 A If any of the ammonia that's added is still
7 present, it would be the same type of effect.

8 Q Do you have an opinion as to whether or not
9 any of the ammonia is still present?

10 A Yes. Some would be still present but at a
11 very low level.

12 Q And what do you base that on?

13 MR. NUNLEY: Mr. Hoag, do you want to
14 convert Mr. Daylor into an expert witness?

15 Q What do you base that on?

16 MR. NUNLEY: Could I have an answer to the
17 question?

18 MR. HOAG: I'm asking him my questions.

19 You've listed him as a witness. I'm asking him
20 questions.

21 MR. NUNLEY: But you're asking him opinion
22 testimony.

23 MR. HOAG: I'm asking him what he bases it
24 on. I'm asking him. Are you instructing him not
25 to answer the question then?

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1 MR. NUNLEY: No.

2 MR. HOAG: Then why are you wasting my time
3 here?

4 MR. NUNLEY: Because I want to understand
5 what the question is. Are you asking this fact
6 witness the basis for his opinion?

7 MR. HOAG: I'm asking him what he bases that
8 opinion on.

9 MR. NUNLEY: Okay. Well, I object to the
10 extent you want to convert him to an expert
11 witness.

12 MR. HOAG: Okay. You can answer.

13 A Because it is volatile -- the added
14 ammonia -- ammonia is volatile, and the added ammonia
15 is subjected to heat, and that is the basis on which I
16 think it would be largely dissipated.

17 Q Had you run any tests to verify this?

18 A No.

19 Q Are you aware of a test to verify this?

20 A No. That is not to say there aren't tests.

21 Q So you just don't know whether there are,
22 one way or the other, correct?

23 A What I don't think is that those
24 measurements are, in fact, made.

25 Q So the opinion you have about the amount of

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1 ammonia that's left once the -- the ammonia that's
2 added, the amount that's actually left after the
3 manufacturing process -- that opinion you have is just
4 a guess, it's not something you actually know,
5 correct?

6 MR. NUNLEY: Objection. It mischaracterizes
7 his testimony. He's already given you a basis
8 for it.

9 Q Is that correct, it's just a guess? It's
10 not something you really know, correct?

16 MR. HOAG: I'm going to object to your
17 coaching the witness on how you want him to
18 respond. It's not appropriate.

19 MR. NUNLEY: I'm going to object to you
20 asking argumentative questions that misrepresent
21 his prior answers.

22 Q You can answer the question. You haven't
23 done any tests and you don't know that there have been
24 any tests done, you are just guessing on whether or
25 not there's any ammonia left or the amount of money

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1 that's left that's added in after the manufacturing
2 process, correct?

3 A I am not guessing.

4 Q Well, if you have no basis for it and there
5 are no tests, how can it be anything other than a
6 guess, sir?

7 MR. NUNLEY: Objection, argumentative, and
8 mischaracterizes his prior testimony.

9 Q You can answer.

10 A There's a glass of water on the table. It's
11 a glass of ice water. If I came back in this room in
12 an hour and there's no ice, I would have the opinion
13 that the ice melted. I didn't run a test. I didn't
14 see it go.

15 Q Have you observed ammonia hydroxide being
16 placed in reconstituted tobacco?

17 A Yes.

18 Q And what is it you observe when you observe
19 that occurring? What's do you see?

20 A I see the tobacco material and the ammonia
21 being meted into the -- the ammonia hydroxide being
22 meted into the sort of slurry of the tobacco
23 materials, and the vessel was closed.

24 Q What does ammonia hydroxide look like? In
25 other words, is it a liquid?

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1 A Yes.

2 Q Does it have a color?

3 A Yes. It's sort of pale milky.

4 Q And how much of this is added into the
5 reconstituted tobacco when you have seen this mix
6 occur?

7 A From memory I really don't know.

8 Q Once this milky substance is added in -- and
9 I'm talking about the pale milky substance that you
10 referred to as ammonia hydroxide -- once that's added
11 in, does it change the color of the mix?

12 A I don't think I have ever made that
13 observation, because the vessel is closed.

14 Q So you don't actually see what happens to it
15 once the vessel is closed, correct?

16 A Visually, no.

17 Q Has there been any time when you have seen
18 what happens to it after the vessel is closed?

19 A When you ask any time, I may have. I just
20 don't know for sure that I have.

21 Q Immediately prior to the time the vessel is
22 closed, the ammonia hydroxide is still in there,
23 right?

24 A Yes.

25 Q What observation do you make of the

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1 reconstituted tobacco process after the vessel is
2 closed that confirms to you that the ammonia hydroxide
3 is no longer in the reconstituted tobacco?

4 A Repeat that.

5 Q What, if there is any observation like this,
6 what observation do you make after the vessel is
7 closed, sometime after the vessel is closed, after the
8 ammonia hydroxide has been added in, what observation
9 do you make that, if any, that indicates to you that
10 the ammonia hydroxide is no longer in the tobacco?

11 A In the tank, in that tank, I probably have
12 not made any direct observation until the
13 reconstituted tobacco is formed into a sheet.

14 Q What direct observations do you make after
15 the reconstituted tobacco has been formed into a sheet
16 that establishes to you that there's no longer any
17 ammonia hydroxide left in the tobacco?

18 A Ammonium hydroxide has a fairly strong odor,
19 and that odor is reduced while the tobacco material,
20 the reconstituted sheet is being dried.

21 Q So you are basing your belief that the
22 ammonia is no longer in the tobacco by the fact that
23 the smell has changed in the reconstituted tobacco
24 after it's dried; is that right?

25 A I'm basing it on the volatility of the

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1 ammonia hydroxide.

2 Q Can define what you mean by volatility?

3 A Very high vapor pressure, very low boiling
4 point.

5 Q Have you read any Philip Morris internal
6 documents that discuss the addition of ammonia in
7 cigarettes?

8 A Yes, experimentally.

9 Q I'm sorry. I didn't hear those last few
10 words.

11 A Yes, I have seen Philip Morris documents
12 that discuss treating tobacco with ammonia on an
13 experimental basis.

14 Q And when did you see those documents?

15 A Sometime around approximately 1980 there was
16 a shortage of burly tobacco and there were a number of
17 experiments conducted to give bright tobacco the
18 flavor characteristics of burly tobacco.

19 Q Those documents that you are referring to,
20 those were related to that, give bright tobacco the
21 flavor of burley?

22 A Yes.

23 Q Other than documents about giving bright
24 tobacco the flavor of burly, have you seen any other
25 Philip Morris documents concerning the addition of

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1 ammonia to tobacco?

2 A Yes. There are patents with Philip Morris
3 people being the inventors that discuss that.

4 Q What patents are you referring to?

5 A Patents dealing with the reconstitution
6 process whereby the tobacco pectin is released and
7 made available to act as binder for the tobacco
8 material.

9 Q Have you ever seen or reviewed any internal
10 tobacco documents indicating that ammonia is added to
11 the product to increase the impact and/or flavor of
12 the product?

13 MR. NUNLEY: Objection as to form, compound.

14 A Would you repeat, please.

15

16 (Court reporter reads question.)

17

18 A I have probably seen documents discussing
19 the flavor effects of ammonia.

20 Q Have you seen any documents that discuss
21 increasing the impact of the cigarette through the use
22 of ammonia?

23 A What is impact?

24 Q What I'm asking you is have you seen any
25 documents that use that word, impact, to describe the

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1 use of ammonia, adding ammonia to the tobacco product?

2 A I would think I have seen the term impact in
3 documents. Beyond that I'm really not sure what was
4 under discussion.

5 Q Do you have any understanding of the term
6 impact as it relates to cigarettes?

7 A Yes. I would think it probably means things
8 like strength, fullness.

9 Q Are you a smoker, a cigarette smoker?

10 A Not now.

11 Q At one time you were a cigarette smoker?

12 A Yes.

13 Q When did you stop smoking?

14 A Approximately '86, 1986.

15 Q How many packs or how many cigarettes did
16 you smoke per day prior to the time you stopped?

17 A It was a varied amount. Maybe some days up
18 to two packs.

19 Q When did you first start to smoke
20 cigarettes?

21 A High school days.

22 Q What grade were you in?

23 A Probably 10th or 11th grade, sophomore,
24 junior kind of thing.

25 Q So you were 15 or 16 when you started?

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1 A Yeah, that's probably correct.

2 Q How old were you when you became a regular
3 smoker, meaning you smoked at least one cigarette
4 every day?

5 A I really don't know, because even when I
6 considered myself a regular smoker, there were days
7 that I didn't smoke.

8 Q Prior to the time that you stopped smoking
9 in 1986 -- before I get to that -- when you say you
10 stopped smoking, have you smoked at all since 1986?

11 A No.

12 Q Prior to the time you stopped smoking for
13 good in 1986, had you ever tried to stop smoking for
14 good before that?

15 A No. It was just some days I didn't smoke
16 and some days that I did smoke.

17 Q So the first time you actually tried to quit
18 was 1986?

19 A I successfully quit smoking full time about
20 1986.

21 Q Was that the first time you actually tried
22 to quit smoking?

23 A Yes.

24 Q How did you do it? Did you cut down
25 gradually? Did you quit cold turkey or what?

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1 A I quit cold turkey. I think that's the
2 term. I came home one day and my wife said I'm
3 quitting smoking, and I said okay, and I quit smoking.

4 Q Had your doctors advised you to quit smoking
5 prior to the time you did?

6 A You mean at that period of time?

7 Q Yes, during that period of time.

8 A No.

9 Q Has a doctor ever advised you to stop
10 smoking during the time that you smoked?

11 A When I was in high school, taking a
12 physical, the doctor said, "Are you smoking? Do you
13 smoke?" I answered "Yes."

14 "Leave your cigarettes here" was his
15 response.

16 Q When you quit smoking did you have any
17 difficulty at all or was it really easy for you?

18 A I'd say easy.

19 Q Did you have any difficulty at all with
20 withdrawal, anything at all, nervousness, anything?
21 As soon as you stopped, it was just basically a snap
22 for you?

23 A Yes, and very definitely just overnight.

24 Q That first day that you stopped, did you
25 ever have a desire to smoke another cigarette?

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1 A Possibly.

2 Q Do you sometimes even now have a desire to
3 smoke a cigarette once in a while or is it something
4 that you just don't think about at all?

5 A I probably think about it, but I don't
6 respond to it, not at the moment. But I'm in the
7 company regularly with lots of smokers.

8 Q Do you know whether or not cigarette smoking
9 causes lung cancer?

10 A Do I know that?

11 Q Yes.

12 A That's beyond my realm.

13 Q You just don't know one way or the other?

14 A I've certainly heard the controversies about
15 smoking and certain disease, including lung cancer.

16 Q So does smoking cigarettes cause lung
17 cancer?

18 MR. NUNLEY: Objection, asked and answered.

19 A Excuse me?

20 Q Does smoking cigarettes cause lung cancer?

21 MR. NUNLEY: Objection, asked and answered.
22 You can answer the question again if you would
23 like to.

24 A I believe that cigarette smoking can be
25 involved in, you know, lung cancer.

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1 Q You say involved in; does that mean you
2 believe cigarette is a cause of lung cancer?

3 A Did you say a cause or the cause? I didn't
4 get that.

5 Q A cause.

6 A It's possibly a cause.

7 Q Possibly a cause; is that what you said?

8 A Yes, I did.

9 Q Just not sure?

10 A I'd even go so far as to say probably.

11 Q What about other diseases; is cigarette
12 smoking the cause of heart disease?

13 A Probably, possibly.

14 Q Emphysema?

15 A Once more, please.

16 Q Is cigarette smoking a cause of emphysema?

17 A These questions on cancer and heart disease
18 and emphysema are way beyond my -- any expertise that
19 I have.

20 Q So you think you would have to know more
21 than you know in order to know whether or not
22 cigarette smoking causes disease?

23 A I would go as far to say it can be part of
24 the cause the diseases you mentioned.

25 Q Now, on your statement, your faxed

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1 statement, that says you may testify concerning
2 various aspects of manufacturing and production. What
3 is the difference between manufacturing and
4 production, if there's a difference?

5 A I'd probably fail to make that distinction.

6 Q You don't think there is a distinction
7 between manufacturing and production?

8 A Right now I'm not making that distinction.

9 Q Okay. Well, are they the same thing to you?

10 A Again, right now I'm not making a
11 distinction between the two.

12 Q The reason I'm asking you this is because
13 the statement telling me what you are going to talk
14 about says you are going to testify concerning various
15 aspects of manufacturing and production, implying that
16 the two are different things. Now, I need to make
17 sure that to you they are not different things. So
18 have they ever been different to you? Have
19 manufacturing and production ever been two different
20 things to you in your experience with Philip Morris?

21 A I think -- while we've been talking here --
22 I think probably the overall start to finish is
23 probably manufacturing, and maybe production is the
24 actual making of a cigarette, in our case here.

25 Q Well, in the process of manufacturing from

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1 the start to finish, by the time you finish, you've
2 actually made the cigarette, right?

3 A Yes.

4 Q So the production falls within the
5 manufacturing process; is that right?

6 A I think that's probably the case.

7 Q When you left the company in 1993 as
8 Principal Scientist, what was your salary?

9 MR. NUNLEY: Objection. I think he said he
10 left in 1994.

11 Q I'm sorry, 1994. Did you say you left in
12 January of 1994?

13 A January 1.

14 Q When you left in January of 1994, what was
15 your salary?

16 A Right about 125,000 per year.

17 Q And was there any other compensation you
18 received other than the base salary?

19 A You mean right at that moment?

20 Q Well, for the last year. Actually for the
21 year 1993 would be better, because you really didn't
22 work in 1994.

23 A Sometime in '93, I'm quite sure I did get
24 incentive compensation.

25 Q What is that?

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1 A Just simply in terms money.

2 Q Is there some kind of formula for that?

3 A I'm sure there is. I'm sure I've probably
4 heard it, but I don't remember what the formula is.

5 Q And what was your incentive compensation for
6 that year?

7 A The year '93?

8 Q Yes.

9 A I don't really know. My guess would be in
10 the range of \$30,000.

11 Q Did you receive stock options at any point?

12 A Yes.

13 Q How many stock options did you have at the
14 time you left, shares of stock options?

15 A When I left I probably had one unexercised
16 stock option that I could not exercise.

17 Q Why were you not able to exercise it?

18 A It was something -- and I don't remember
19 exactly the details of it now -- but there was
20 something in the option agreement that I failed to
21 notice, and I could not exercise that option because I
22 failed to notice this paragraph, whatever it was, in
23 the option agreement.

24 Q And you own shares of Philip Morris stock?

25 A Yes.

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1 Q How many shares do you own?

2 A About 5,000.

3 Q During the course of your employment, you
4 have actually exercised stock options and received
5 money for those stock options, correct?

6 A I don't ever recall receiving money for the
7 stock option.

8 Q Did you ever exercise any stock options?

9 A Yes.

10 Q What you did was you purchased the stock at
11 the lower price when it was really selling higher; is
12 that what you did?

13 A Yes. They were bought -- the shares that
14 were acquired with stock options were bought at the
15 option price.

16 Q Are those among the 5,000 shares you
17 currently own?

18 A They are among them.

19 Q You mentioned that sometime around 1980
20 there were a number of experiments conducted related
21 to bright tobacco and burley. What exactly were those
22 experiments? What do you know about those
23 experiments?

24 MR. NUNLEY: Objection. The question
25 mischaracterizes the prior testimony.

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1 A Some of the experiments -- there were lots
2 of experiments, and many of them centered on treating,
3 experimenting with bright tobacco and treating it,
4 experimenting with it by the addition of ammonia to
5 change the flavor characteristics.

6 Q Did you participate in any of those
7 experiments?

8 A I think at that time I was probably Manager
9 of Flavor Development, and some of those experiments
10 were done by people in that department.

11 Q And you managed some of those people?

12 A Yes.

13 Q What did you do in relation to managing
14 people who worked on that project, if anything?

15 MR. BHATIA: Objection, vague.

16 A Probably before the experiment, discussed
17 the experiment with them, and most likely smoked the
18 cigarettes afterwards, after the experiment that is.

19 Q Were any of experiments successful?

20 A Nothing went beyond experimental stages.

21 Q By that you mean none of the experiments
22 resulted in any changes in any of the cigarettes,
23 correct?

24 MR. NUNLEY: Objection, vague. Do you mean
25 any commercial changes, Mr. Hoag? I think your

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1 question is unclear.

2 MR. HOAG: I said any of the changes in any
3 of the cigarettes that were actually sold. That
4 would mean commercial changes.

5 A The answer, I'm very confident, is no.

6 Q During the process of manufacturing and/or
7 production of cigarettes, have you ever been involved
8 in any activities related to monitoring the nicotine
9 level in the tobacco?

10 A No.

11 Q Do you know if anyone has ever monitored the
12 nicotine level in tobacco, anyone that works for
13 Philip Morris?

14 A My recollection pretty firmly is that the
15 alkaloid level in the finished cigarette is measured.

16 Q And using alkaloid as a term synonymous with
17 nicotine?

18 A Not synonymous.

19 Q Use it to identify whether there's nicotine
20 in the product, the alkaloid level?

21 A Nicotine would be included in the alkaloid
22 level.

23 Q Most of the alkaloid is going to be
24 nicotine, right?

25 A I think that is correct, yes.

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1 Q Not just 50 percent, but 90 percent or more
2 of it is going to be nicotine, right?

3 A Up in that range, I really don't remember.

4 Q Now, why do they monitor the alkaloid level,
5 if you know?

6 MR. NUNLEY: Objection to the
7 characterization. I think he said they measured
8 it in the final product, and as to foundation.

9 Q You can answer the question.

10 A Okay. Well, would you please give me the
11 question again.

12 Q I said why do they monitor or measure the
13 alkaloid level in cigarettes, if you know?

14 A The several parameters on the cigarettes are
15 measured including the pressure drop across the
16 product, resistance to draw, and to assure that the
17 customer, the consumer is getting the product that he
18 expects.

19 Q Well, what would happen, if you know, if the
20 alkaloid level was lower than required on a tobacco
21 that was measured or monitored?

22 MR. NUNLEY: Objection, foundation.

23 A I can't really tell you, if it were.

24 Q That was simply something you weren't
25 involved in?

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1 A No. I wasn't involved directly in any of
2 those measurements.

3 Q Were you ever involved in making corrections
4 if the alkaloid level wasn't at the required level?

5 MR. NUNLEY: Objection, assumes facts not in
6 evidence. You can answer.

7 A I think your question was I ever involved in
8 adjusting alkaloid level?

9 Q Yes.

10 A No. The answer is no.

11 Q Do you know if it's possible to adjust the
12 alkaloid level?

13 A I think it would be impossible to adjust the
14 alkaloid level in a cigarette, in a finished
15 cigarette.

16 Q In a finished cigarette? Did you say in a
17 finished cigarette?

18 A Yes, I did, meaning completed.

19 Q You mean once the cigarette is completed, it
20 would be impossible to change the cigarette; is that
21 right?

22 A To change the alkaloid content, yes.

23 Q So if you were measuring the alkaloid
24 content, and it was too high or too low, you just have
25 to go back somewhere in the production process to make

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1 your changes?

2 MR. NUNLEY: Objection, assumes facts not in
3 evidence. He's testified this is something he
4 has not been involved in. It calls for
5 speculation.

6 Q Is that correct; you just have to go back in
7 the production process to make those changes if they
8 were necessary?

9 A I think you would have to start over again.

10 Q And do you know whether or not that happened
11 when they measured the alkaloid level and it wasn't
12 the required level?

13 MR. NUNLEY: Objection, foundation.

14 A To my knowledge I don't think it happened.

15 Q But you don't know one way or the other
16 whether that happened or not; is that correct?

17 A To my knowledge I don't think it happened.

18 Q Do you know whether that happened or not?

19 MR. NUNLEY: I think he's given you the
20 answer to that question, Mr. Hoag.

21 Q Do you know whether that happened or not?

22 A No. I was there in various capacities at
23 Philip Morris from '60 to '94. Before that time it
24 could have happened. I don't think it happened in the
25 period 1960 to end of '93.

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1

(Break taken.)

3

4 (Court reporter reads last answer.)

5

6 Q You don't think it happened, but you don't
7 know whether or not it happened, correct?

8 A Are we talking about alkaloid adjustment?

9 Q Yes.

10 A I don't think it happened.

11 Q But you not know whether or not it happened,
12 correct?

13 A Okay.

14 Q Is that correct?

15 A Yeah.

16 Q You said at the end of the manufacturing
17 process, the cigarette would be measured for alkaloid
18 content, correct?19 MR. NUNLEY: Objection. I think that
20 mischaracterizes his testimony.

21 Q Is that correct?

22 A The alkaloid content is measured. Is that
23 at the end of the manufacturing process, it is
24 measured.

25 Q And what is the purpose of measuring the

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1 alkaloid content of the cigarette?

2 MR. NUNLEY: Objection, foundation.

3 Q You can answer.

4 A The purpose of the alkaloid measurement,
5 among the other measurements that are made, is to know
6 that the product going to the consumer is correct.

7 Q So as far as measuring the alkaloid content
8 is concerned, Philip Morris wants to make sure the
9 particular brand cigarette has the correct amount of
10 nicotine in it, correct?

11 MR. NUNLEY: Objection as to form.

12 A That it has the correct -- that the alkaloid
13 content is correct, including with the nicotine; that
14 the pressure drop across the cigarette is correct,
15 among lots of other measurements that are made to
16 insure that.

17 Q And if it doesn't have what Philip Morris
18 deems to be the correct amount of nicotine, is Philip
19 Morris still going to market that cigarette?

20 MR. NUNLEY: I don't know. I'm not aware of
21 it having happened.

22 Q But it wasn't your job to do those
23 measurements, correct?

24 A No. I'm not an analytic chemist.

25 Q So it could have happened and you wouldn't

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1 have known about it, correct?

2 MR. NUNLEY: Objection, argumentative.

3 Q Is that correct?

4 A I didn't know of it if it did happen.

5 Q Did you bring any documents with you today?

6 A Excuse me?

7 Q Did you bring any documents with you today?

8 A Yes, the papers that Mr. Nunley faxed to
9 you.

10 Q Your resume?

11 A Yeah. Yes, sir.

12 Q Other than that did you bring anything else
13 with you?

14 A No.

15 Q Have you prepared any reports for this
16 testimony or the trial testimony in the Engle case?

17 A No.

18 Q Do you plan to prepare any reports?

19 A Say that last thing again.

20 Q Do you plan to prepare any reports?

21 A No.

22 Q Have you reviewed any documents for this
23 case?

24 A No.

25 Q Do you plan to review any documents?

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1 A The answer is no.

2 Q You said you weren't getting an hourly fee
3 for your testimony today; is that correct?

4 A I am not.

5 Q Do you have any kind of a contract with
6 Philip Morris whereby you are guaranteed a certain
7 amount of compensation for being willing to serve as a
8 consultant on an as-needed basis?

9 A No. I have no contract with Philip Morris.

10 Q A contract with any law firm or any or
11 tobacco company?

12 A The answer is yes.

13 Q Do any of the contracts that you have with
14 any company or any law firm representing tobacco
15 companies, do any of those contracts have you agreed
16 to provide consultation for a certain set fee before
17 your fees go up after serving a certain number of
18 hours or certain number of weeks of consultation?

19 MR. NUNLEY: Objection as to form.

20 A Would you spread that out again.

21 Q Let me try to explain it more of a narrative
22 before I get to the question. I notice some people
23 have contracts wherein they will get a certain set
24 amount of money for up to a certain number of hours,
25 like maybe it might be up to 75 hours they are going

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1 to get a certain amount of money even if they don't do
2 75 hours of consultant work. They are just like sort
3 of on retainer. And then if they work more than 75
4 hours, then they click into some kind of an hourly fee
5 or some additional fee. What I'm asking you is do you
6 have any kind of contract like that with any of the
7 law firms that you work with that represent tobacco or
8 a tobacco company?

9 A No, I don't.

10 MR. HOAG: With the exception of those
11 things we have already put on the record related
12 to positional questions that we would like to get
13 answered, I don't have any other questions, so we
14 can conclude the deposition at least for today.

15 MR. NUNLEY: I have got some direct
16 testimony I would like to take of Mr. Daylor.

17
18 EXAMINATION BY MR. NUNLEY:

19
20 Q Mr. Daylor, Mr. Hoag asked you earlier
21 certain questions concerning a type of reconstituted
22 tobacco product that Philip Morris manufactures that
23 is called RCB; do you recall that?

24 A Yes.

25 Q The plant where RCB is made is located in

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1 Richmond, Virginia; is that correct?

2 A Yes.

3 Q You have been at that plant before?

4 A Yes.

5 Q What is the -- if I were to walk into a
6 tobacco field and saw a tobacco plant, is a tobacco
7 plant a leafy plant?

8 MR. HOAG: Object to the form of the
9 question.

10 MR. NUNLEY: What basis?

11 MR. HOAG: Vague, overbroad, and he can't
12 know what you would do if you were to walk into a
13 tobacco field.

14 Q Have you ever seen a tobacco plant,
15 Mr. Daylor?

16 A In the field, yes.

17 Q Have you ever seen a tobacco leaf?

18 A Yes.

19 Q Could you describe a tobacco leaf for the
20 members of the jury.

21 A You are talking about probably ripe tobacco.

22 MR. HOAG: I'm going to object to the form
23 of the question in that it's vague and overbroad.
24 It's more than one type of tobacco leaf.

25 MR. NUNLEY: I'll take that clarification.

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1 Q You think you have seen a bright leaf; is
2 that correct, Mr. Daylor?

3 A Yes, I have.

4 Q Could you describe for the jury what a
5 bright leaf of tobacco looks like.

6 MR. HOAG: I'm objecting to the form of the
7 question as leading.

8 MR. NUNLEY: Leading? How is that leading,
9 Mr. Hoag?

10 MR. HOAG: That was L-E-A-D-I-N-G.

11 MR. NUNLEY: I'll be happy to have the Judge
12 rule on that objection.?

13 MR. HOAG: Why don't you just move on.

14 MR. NUNLEY: You can tell Mr. Hoag doesn't
15 want the jury to hear your testimony, Mr. Daylor.

16 MR. HOAG: That's such a nonsensical
17 statement.

18 Q Could you --

19 MR. HOAG: A Judge would probably hold you
20 in contempt for probably making that kind of
21 statement.

22 Q Could you describe for the members of the
23 jury what a bright tobacco leaf looks like.

24 A In the field, a bright tobacco leaf is
25 probably on the long axis about 18 to 20 inches long,

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1 at the widest part maybe 6 to 8 inches wide with a
2 midrib running down the center.

3 Q The midrib that you're describing, does
4 Philip Morris use those midribs in its cigarettes?

5 A That leaf after it's cured, yes.

6 Q Are you familiar with what's called a
7 **stemmery**?

8 A In principle, yes.

9 Q What function does a **stemmery** serve in the
10 manufacturing of cigarettes?

11 A The function of the **stemmery** is to remove,
12 separate the midrib from the lamina parts of the leaf.

13 Q The midrib being what you described as the
14 sort of the spine of the leaf itself, and the lamina
15 being the more leafy portions; is that correct?

16 MR. HOAG: Object to the form of the
17 question.

18 Q Is that correct, Mr. Daylor?

19 A Yes.

20 Q Philip Morris refers to the leafy portions
21 of the leaf, I think you said, as lamina; is that
22 correct?

23 MR. HOAG: Object to the form of the
24 question.

25 Q Is that correct?

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1 A Yes.

2 Q How is lamina used in cigarette
3 manufacturing?

4 A It is used separately from the midrib,
5 called in general terms the stem. And the lamina is
6 processed, and the stem material for the most part
7 goes to one of the reconstitution processes.

8 Q Could you describe for the jury what the
9 stem material looks like when it's received by Philip
10 Morris from the stemmery.

11 A A short, maybe three to five inches long
12 piece of kind of puffy material, kind of woody in
13 appearance.

14 Q Would you compare it to a twig?

15 MR. HOAG: Objection, leading.

16 Q You can answer the question.

17 A Sort of looks like a twig.

18 Q And Philip Morris uses these pieces of stem
19 to make reconstituted tobacco?

20 MR. HOAG: Objection to the form of the
21 question, leading.

22 Q You can answer.

23 A I think most of the stem is used in
24 reconstituted tobacco. There may be some stem
25 incorporated as one form of stem or another.

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1 Q Mr. Hoag asked you several questions about
2 what's called the RCB process; do you remember that?

3 A Yes.

4 Q And I think you testified that Philip Morris
5 uses ammonia hydroxide in that process; is that
6 correct?

7 A Yes.

8 Q And could you tell the jury again why
9 ammonia hydroxide is used in the RCB process.

10 A The ammonia hydroxide facilitates the
11 freeing of the pectin, the tobacco pectin, so that
12 tobacco pectin can serve as a binder to hold the
13 tobacco materials together in this sheet form.

14 Q And is the pectin a naturally occurring
15 substance in tobacco?

16 A Pectin occurs naturally in tobacco.

17 Q Does pectin occur in other fruits and
18 vegetables?

19 A Absolutely, yes.

20 MR. HOAG: Object to the form of the
21 question as to other fruits and vegetables. It's
22 not a fruit or a vegetable.

23 Q For example, does pectin occur in
24 strawberries?

25 A Yes.

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1 Q Does pectin serve a purpose in the
2 manufacture of jam or jelly?

3 A Yes.

4 Q Could you describe for the jury what that
5 purpose is.

6 A It takes a fluid, juicy kind of form and
7 makes it into a shaky solid.

8 Q Now --

9 A Excuse me a second.

10 Q Mr. Hoag asked you certain questions about
11 the volatility of ammonia; do you recall that?

12 A Yes.

13 Q At room temperature what state, liquid, gas,
14 or solid does ammonia taking?

15 A Twenty degrees C, gas.

16 MR. HOAG: I'm going to object. The answer
17 is not response to the question. Object both to
18 the question and the answer.

19 Q You testified, I believe, that ammonia
20 hydroxide is added to the stem materials to create a
21 slurry; is that correct?

22 MR. HOAG: Object to the form of the
23 question, leading.

24 A I might have said tobacco materials. I
25 might have said stem.

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1 Q In the RCB process, are stems used?

2 A Yes.

3 MR. HOAG: Object to the form of the
4 question.

5 Q Are any other tobacco materials used?

6 MR. HOAG: Object to the form of the
7 question, vague, overbroad.

8 Q You can answer.

9 A Are we talking about RCB?

10 Q Yes, sir.

11 A Most of the tobacco material in RCB is stem.

12 Q You used the term slurry. Could you
13 describe for the jury what the slurry is in the RCB
14 process.

15 A I could probably better describe what it
16 looks like.

17 Q That would be fine. Please do that.

18 A It's fluid. It's dark brown in color. I
19 have only seen this in samples taken. And I think it
20 might be a little bit lumpy.

21 Q Once the slurry is mixed, what is the next
22 processing step in the RCB process?

23 A Repeat that.

24 Q Once the slurry is manufactured, can you
25 tell the jury generally speaking what next happens in

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1 the RCB process.

2 MR. HOAG: Objection to the form of the
3 question, broad.

4 Q You can answer.

5 A I think the ammonium hydroxide is
6 introduced.

7 Q You testified in response to Mr. Hoag's
8 questions that after the slurry and ammonium hydroxide
9 were mixed, the resulting mixture was placed on a
10 sheet; do you recall that?

11 A I don't recall it, but it's true.

12 Q Could you describe for the jury that process
13 of how it's casted onto the sheet.

14 A Well, the term is casting. It's casted from
15 a box onto the belt I think is a better term than
16 sheet. And it goes through various stages of a drying
17 process where heat is applied to it, because it's
18 water rich.

19 Q And could you describe those dryers for the
20 jury?

21 A Aside from introducing heat, not really.

22 Q And it's your testimony, I believe, that the
23 introduction of that heat results in the ammonia being
24 driven off from the RCB; is that correct?

25 MR. HOAG: Object to the form of the

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1 question, leading.

2 Q You can answer.

3 A Driving off most of it, certainly most of
4 it.

5 Q And is that due in part to the volatility of
6 the ammonia hydroxide?

7 A Yes, in response to the heat.

8 Q Do you know when Philip Morris started using
9 the RCB reconstituted process?

10 A Probably around '67 would be my
11 recollection.

12 MR. HOAG: Object to the answer as not
13 responsive. "Probably" means he doesn't actually
14 know the answer to the question.

15 A I think I was there when it was -- when the
16 sheet process evolved from that gum bound sheet to the
17 RCB. I do not know from my memory the exact date on
18 which that happened. I'm sticking with about 1967.

19 Q Did you have occasion to taste the smoke of
20 the reconstituted product that Philip Morris used
21 before RCB was developed?

22 A Yes, sir.

23 Q And you had occasion to taste the smoke of
24 RCB product?

25 A Yes, sir.

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1 Q Could you describe the difference in taste
2 between the former product as compared to the RCB
3 product?

4 A In general results, yes. The former
5 product, the gum bound, really did not have tobacco --
6 didn't deliver tobacco smoke flavor. The RCB product
7 delivered more of a flavor that is not identical to
8 but more reminiscent of lamina smoke flavor.

9 Q In that time frame, 1967 or so, you were
10 involved in part in taste testing Philip Morris
11 products; is that correct?

12 A Yes.

13 Q And as a part of that work, you tested
14 cigarettes made with the RCB product?

15 A Yes.

16 Q And in your opinion did products that were
17 made with the RCB product taste better than products
18 made with the gum bound BL product?

19 MR. HOAG: Object to the form of the
20 question.

21 Q You can answer the question.

22 A Yes.

23 Q Do you recall any discussions at that time
24 concerning using ammonia as a way to effect nicotine
25 delivery?

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1 MR. HOAG: At what time are we talking about
2 now?

3 MR. NUNLEY: 1967.

4 A Repeat the question, please.

5 Q Do you recall any discussions in 1967 about
6 using ammonia to effect nicotine delivery?

7 A It was well into the nineties before I even
8 heard that subject come up.

9 Q And in the nineties when you heard that
10 subject, what was it in connection with?

11 A The ABC program that resulted in a suit.

12 MR. NUNLEY: Those are all the questions we
13 have.

14 MR. HOAG: I have a couple of questions.

15

16 EXAMINATION BY MR. HOAG:

17

18 Q The ABC program, what ABC program are you
19 talking about?

20 A I don't remember the name of it, but it was
21 probably I just knew about the program. I'm not much
22 of a T.V. watcher. But I believe the term the
23 company -- the industry is spiking cigarettes with
24 nicotine. Some phrasing like that was made in a T.V.
25 program that ran on the ABC network.

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1 Q Did you watch the program?
2 A No. I'm not much after a T.V. watcher.
3 Q Do you know who was interviewed for that
4 program?

5 A I probably knew at the time, but I don't
6 know now.

7 Q Were any of the people on that program
8 former Philip Morris employees?

9 A I really don't know.

10 Q Do you know Victor DeNoble?

11 A I know the name. I have seen him.

12 Q How do you know him?

13 A At one time he was an employee of Philip
14 Morris.

15 Q Do you work with him at all?

16 A No.

17 Q Do you know anything at all about what he
18 did?

19 A I know that he worked in the tower.

20 Q Have you had any discussions with him?

21 A No.

22 Q Do you know a person named Farone,
23 F-A-R-O-N-E?

24 A Yes, I know Dr. Farone.

25 Q Who is he?

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1 A He was a former Philip Morris employee.

2 Q What did he do at Philip Morris?

3 A Specific projects, I really don't know. He
4 probably was an Associate Principal Scientist, and
5 then either a Manager or a Director of a research
6 function.

7 Q Do you know what this research function was?

8 A Not really, no.

9 Q Have you ever had any discussions with him
10 about his research function?

11 A No.

12 Q Did you have any discussions with him about
13 ammonia?

14 A No.

15 Q Did you have any discussions with him at all
16 about anything?

17 A Excuse me. I must go back to the
18 discussions with Farone. The work, I do think that
19 some of either Dr. Farone or some of the people in his
20 department worked on that ammonia, trying to make
21 bright tobacco smoke like burly tobacco. I think
22 that's true.

23 Q You don't know, but you think so?

24 A That's correct.

25 Q You really don't have personal knowledge

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1 though; is that right?

2 A At this moment you're right.

3 Q And you really haven't had a discussion at
4 with Dr. Farone, correct?

5 MR. NUNLEY: You mean ever? Objection,
6 vague as to time frame.

7 Q At any time you have never had any
8 discussions with Dr. Farone; is that correct?

9 A That's incorrect.

10 Q When did you have discussions with
11 Dr. Farone?

12 A Say the first part again, please.

13 Q When did you have discussions with
14 Dr. Farone?

15 A Last time I talked with him, I had a chance
16 meeting with him at the Richmond airport. We said
17 hello.

18 Q Pretty much all the discussion you had, you
19 said hello?

20 A That discussion, absolutely.

21 Q Ever have any other discussions where you
22 said more than hello?

23 A Yes.

24 Q What were the discussions about?

25 A His pipe tobacco smoking and my cigarette

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1 smoking.

2 Q Other than discussing pipe tobacco smoking
3 and cigarette smoking, did you ever have any other
4 discussions with Dr. Farone?

5 A Possibly, but no continuing discussions.

6 Q Nothing that you can recollect now of
7 substance; is that correct?

8 A Yes.

9 Q How about William Dunn; do you know who is?

10 A Yes, I do.

11 Q Who is he?

12 A He is a retired Philip Morris fellow, and as
13 far as I know, he lives in [DELETED]

14 Q Have you ever had any discussions with him?

15 A Yes.

16 Q What about?

17 A Good grief. Bill and I have been associated
18 for a very, very long period of time, and a whole lot
19 of things.

20 Q Specifically did you ever have any
21 discussions with William Dunn about nicotine?

22 A I know that Bill had strong feelings about
23 nicotine being an important part of cigarette smoke.

24 Q How do you know that?

25 A My recollection would be he probably told me

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1 that.

2 Q What did he tell you besides he thought it
3 was important?

4 A Sir, I haven't been in Bill Dunn's company
5 since I retired. So I really can't answer that
6 question.

7 Q All you remember is from conversations you
8 had with him when you were both Philip Morris
9 employees, he told you he thought nicotine was
10 important in cigarettes, right?

11 A That type of thing, yes.

12 Q Did he think nicotine was the most important
13 ingredient in cigarettes?

14 A I don't know that.

15 Q He gave you that impression though, didn't
16 he?

17 MR. NUNLEY: Objection, argumentative.

18 Q You can answer.

19 A I don't really have the opinion that he felt
20 it was the most important thing. I don't know what
21 the most important thing was from Bill's view.

22 Q Well, do you remember anything else he told
23 you other than he thought nicotine in cigarettes was
24 important?

25 A He probably told me a lot of things. None

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1 really sticks in my mind as other things that Bill has
2 talked about.

3 Q Did you ever have any discussions with him
4 about ammonia?

5 A No.

6 Q Have you ever read any internal documents
7 authored by William Dunn?

8 A Yes. At one time Bill -- I guess the term
9 would be supervised or managed the panel test
10 function, and the reports of panel testing would have
11 either been written by Bill or by his direct reports.

12 Q What do you mean panel tests?

13 A Where cigarettes are presented to subjects
14 and they are asked -- if it's a two-cigarette test,
15 does one differ from the other, answering questions
16 like that.

17 Q What was the conclusion of this memo, of
18 this internal document?

19 A I have no idea other than either they were
20 or were not different.

21 Q Do you recollect any other documents offered
22 by William Dunn?

23 A Say at that time again, please.

24 Q Do you have any recollection of any other
25 documents offered by William Dunn?

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1 A Those were the kind of documents from Bill
2 Dunn that I was familiar with.

3 Q Do you have any other specific recollection
4 of any content of any other documents other than what
5 you have just mentioned that were authored by William
6 Dunn?

7 A No.

8 Q Now Mr. DeNoble, do you know exactly what he
9 was working on?

10 A No, I don't.

11 Q Do you know whether or not it had anything
12 to do with nicotine?

13 A Not from my knowledge, no.

14 MR. NUNLEY: Mr. Hoag, I think you've
15 strayed pretty far from the scope of the
16 cross-examination.

17 MR. HOAG: Well, I'm actually finished, but
18 I think it all relates to your direct,
19 specifically when he mentioned the ABC program.
20 But I am finished now.

21 Thank you very much, sir, for your time.

22 THE WITNESS: You're welcome. And I assume
23 he is going to read his deposition?

24 MR. NUNLEY: Yes.

25 MR. HOAG: I will order a copy, the

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1 miniscript and the disk.
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1 COMMONWEALTH OF VIRGINIA,
2 CITY OF RICHMOND, to wit:

3
4 I, Sherall W. Dementi, a Notary Public for
5 the State of Virginia at Large, do hereby certify that
6 the foregoing deposition of FRANK L. DAYLOR was duly
7 sworn to before me at the time and place set out in
8 the caption hereto.

9 Further, that the transcript of the
10 deposition is true and correct, and that there was one
11 exhibit filed with me during the taking hereof.

12 Given under my hand this 31st day of May,
13 1998.

14
15 
16 Sherall W. Dementi
17 Notary Public for the
18 State of Virginia at Large

19
20 My Commission expires:
21 August 31, 1999

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1 COMMONWEALTH OF VIRGINIA,
2 CITY OF RICHMOND, to wit:

3

4 I, FRANK L. DAYLOR, do hereby certify that I
5 have read the foregoing pages of typewritten matter
6 numbered 1 through 89, and that the same contains a
7 true and correct transcription of the deposition given
8 by me on the 21st day of May, 1998, with the exception
9 of the noted corrections, to the best of my knowledge
10 and belief.

11

12

Date

FRANK L. DAYLOR

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Subscribed and sworn to before me this _____

day of _____, 199 ____.

My commission expires _____.

Notary Public

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